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To: Commissioner for Patents for Examiner Nicholas A. Martin Group Art Unit 2154	Facsimile No.: 571/273-8300
From: Jennifer Pilcher Legal Assistant to Wayne Bailey	No. of Pages Including Cover Sheet: 21
Message:  Enclosed herewith: <ul style="list-style-type: none"><li>• Transmittal Document; and</li><li>• Appeal Brief.</li></ul>	
Re: Application No. 09/888,472 Attorney Docket No: AUS920010403US1	
Date: Tuesday, August 09, 2005	
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AUG 10 2005

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Jones et al.

Serial No.: 09/888,472

Filed: June 25, 2001

For: Method and Apparatus to  
Encourage Client Into a Distributed  
Peer to Peer Sharing Technology

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PATENT TRADEMARK OFFICE  
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Group Art Unit: 2154

Examiner: Martin, Nicholas A.

Attorney Docket No.: AUS920010403US1

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Respectfully submitted,



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PATENT

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By:

  
Jennifer Pilcher

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## APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on June 9, 2005.

The fees required under § 41.20(B)(2), and any required petition for extension of time for filing this  
brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.(Appeal Brief Page 1 of 19)  
Jones et al. - 09/888,472

**REAL PARTY IN INTEREST**

The real party in interest in this appeal is the following party: International Business Machines Corporation.

**RELATED APPEALS AND INTERFERENCES**

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

**STATUS OF CLAIMS****A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1-15

**B. STATUS OF ALL THE CLAIMS IN APPLICATION**

1. Claims canceled: none
2. Claims withdrawn from consideration but not canceled: none
3. Claims pending: 1-15
4. Claims allowed: none
5. Claims rejected: 1-15
6. Claims objected to: none

**C. CLAIMS ON APPEAL**

The claims on appeal are: 1-15

**STATUS OF AMENDMENTS**

No amendment after final was filed in this case.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

#### **A. CLAIM 1 - INDEPENDENT**

Claim 1 is directed to particular techniques used in a peer-to-peer computer network, and in particular is directed to incentive techniques for providing incentives to client machines to contribute resources to such peer-to-peer networking. When a request for information is received from a client machine, a determination is made as to whether the client machine has contributed resources to peer-to-peer sharing. The requested information is sent to the client machine, with priority being given to requests from clients which are contributing resources to peer-to-peer sharing (Specification page 10, line 4 – page 5, line 12; Figure 4, all elements).

#### **B. CLAIM 4 - INDEPENDENT**

Claim 4 is directed to particular techniques used in a peer-to-peer computer network, and in particular is directed to techniques for accessing information in a peer-to-peer computer network by a device. Computer resources are contributed by the device to peer-to-peer sharing technology. Information is requested from a network server by the device. This request is given priority in proportion to the level of resources contributed to peer-to-peer sharing by the device (Specification page 10, line 4 – page 5, line 12; Figure 4, all elements).



**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

**A. GROUND OF REJECTION 1 (Claims 1-15)**

Claims 1-15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hartsell et al. (US 2002/0174227 A1).

## ARGUMENT

### A. GROUND OF REJECTION 1 (Claims 1-15)

#### A.1. Claims 1-3, 6-8 and 11-13

With respect to Claim 1 (and dependent Claims 2 and 3), Appellants urge that the cited reference does not teach the claimed steps of (1) “determining *if the client machines are contributing resources to peer-to-peer sharing*” (emphasis added), or (2) “sending the requested information to the client machines, *wherein priority is given to requests from clients which are contributing resources to peer-to-peer sharing*” (emphasis added). These claimed steps advantageously provide incentives for client machines to contribute resources to a peer-to-peer computer network. The cited reference does not teach any method of providing such incentives for client machines. In rejecting Claim 1, the Examiner states Hartsell teaches a determination of whether client machines are contributing resources to peer-to-peer sharing at page 15, paragraph [0136]; page 20, paragraphs [0184] and [0190]; and page 22, paragraph [0199]. Appellants have thoroughly reviewed these cited passages and find no such teaching, as will now be described in detail.

Hartsell paragraph [0136] describes an internal technique within the content delivery mechanism itself. The internal technique is a content acceleration technique, and is achieved by the use of multiple engines that may communicate as a peer so that communication and data paths within the content delivery system may skip unnecessary engines. For example, data may be communicated directly from the storage processor engine of the content delivery system to the transport processing engine of the content delivery system without having to utilize resources of the application processing engine of the content delivery system. While the internal design of, and processing within, the content delivery system in and of itself may possibly utilize some type of peer to peer environment for its internal processing engines, there is no teaching of *determining if client machines are contributing resources to peer-to-peer sharing*, as expressly claimed in Claim 1. The importance of this missing claimed step will become apparent below, during the discussion of the missing claimed step (2) identified above.

Hartsell paragraph [0184] describes various deterministic information management features that include the manipulation of information based upon system conditions or values. The present invention does not seek claim coverage for such a broad-based scenario, but rather is specific to sending information to clients in a priority fashion, where the priority is based upon client contribution of resources to peer-to-peer sharing. There is no teaching in this cited paragraph of *determining if client machines are contributing resources* to peer-to-peer sharing, as claimed.

Hartsell paragraph [0190] describes a technique for filtering requests for content. An example of such filtering is rejecting requests for content that a receiving system is not capable of processing. There is no teaching that this receiving system is contributing resources to peer-to-peer sharing, or that requested information is sent to the receiving system where priority is given to requests from receiving systems which are contributing resources. Thus, there is no teaching in this cited paragraph of *determining if client machines are contributing resources* to peer-to-peer sharing, as claimed.

Hartsell paragraph [0199] generally describes policies for delivering content based upon certain parameters. The parameters include things such as type of request, type of file or service requested, user identification or predefined priority per quality of service or service level agreement. This cited passage makes no mention that this priority is based in any way upon a requestor's contribution of resources. It merely states that priority information is associated with a request. Thus, there is no teaching in this cited paragraph of *determining if client machines are contributing resources* to peer-to-peer sharing, as claimed.

As to the claimed step of "sending the requested information to the client machines, wherein priority is given to requests from clients which are contributing resources to peer-to-peer sharing" (emphasis added), the Examiner cites Hartsell at page 15, paragraph [0136]; page 20, paragraphs [0184]; and page 21, paragraph [0194]. Appellants have thoroughly reviewed these cited passages and find no such teaching, as will now be described in detail.

Hartsell paragraph [0136] describes an internal technique within the content delivery mechanism itself. The internal technique is a content acceleration technique, and is achieved by the use of multiple engines that may communicate as a peer so that communication and data paths within the content delivery system may skip unnecessary engines. For example, data may be communicated directly from the storage processor engine of the content delivery system to the

transport processing engine of the content delivery system without having to utilize resources of the application processing engine of the content delivery system. While the internal design of, and processing within, the content delivery system in and of itself may possibly utilize some type of peer to peer environment for its internal processing engines, there is no teaching of "sending the requested information to the client machines, *wherein priority is given to requests from clients which are contributing resources to peer-to-peer sharing*", as expressly claimed in Claim 1.

Hartsell paragraph [0184] describes various deterministic information management features that include the manipulation of information based upon system conditions or values. The present invention does not seek claim coverage for such a broad-based scenario, but rather is specific to sending information to clients in a priority fashion, where the priority is based upon client contribution of resources to peer-to-peer sharing. There is no teaching in this cited paragraph of "sending the requested information to the client machines, *wherein priority is given to requests from clients which are contributing resources to peer-to-peer sharing*", as expressly claimed in Claim 1.

Hartsell paragraph [0194] describes a monitoring agent that determines if requested resources are available, with a positive or negative response being provided by the monitoring agent to a system monitor as to whether the requested resources are available. Such passage does not describe any type of priority, and in particular does not describe any type of priority being given to requests from clients which are contributing resources to peer-to-peer sharing, as expressly recited in Claim 1.

As shown above, none of the cited references teach two key features of the present invention - "determining *if the client machines are contributing resources to peer-to-peer sharing*" (emphasis added), and "sending the requested information to the client machines, *wherein priority is given to requests from clients which are contributing resources to peer-to-peer sharing*". These claimed steps advantageously provide incentives for client machines to contribute resources to a peer-to-peer computer network. The cited reference does not teach any method of providing such incentives for client machines. For a prior art reference to anticipate in terms of 35 U.S.C. 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990) (emphasis added by Appellants). As shown above, every element of the claimed invention is not identically

shown in the cited Hartsell reference, and thus Claim 1 (and dependent Claims 2 and 3) is not anticipated by the Hartsell reference.

With respect to Claim 6 (and dependent Claims 7 and 8) and 11 (and dependent Claims 12 and 13), Appellants urge error in the rejection of such claims for similar reasons to those given above with respect to Claim 1.

#### A.2. Claims 4, 5, 9, 10, 14 and 15

With respect to Claim 4 (and dependent Claim 5), Appellants urge that the cited reference does not teach the claimed step of requesting information from a network server, *wherein the request is given priority in proportion to the level of resources contributed to peer-to-peer sharing*. In rejecting this aspect of Claim 4, the Examiner cites Hartsell page 27, paragraph [0236] and page 15, paragraph [0136] as teaching this claimed step. Appellants have thoroughly reviewed these cited passages and find no such teaching, as will now be described in detail.

Hartsell paragraph [0236] describes a summary of the previously described Hartsell teachings, and summarizes deterministic management of information. While this passage does mention use of a priority level, how such priority level is obtained or subsequently used is not described. In particular, this passage does not teach that this priority is in any way in proportion to a level of resources contributed to peer-to-peer sharing. Thus, there is no teaching or suggestion in this cited paragraph of requesting information from a network server, *wherein the request is given priority in proportion to the level of resources contributed to peer-to-peer sharing*.


Hartsell paragraph [0136] describes an internal technique within the content delivery mechanism itself. The internal technique is a content acceleration technique, and is achieved by the use of multiple engines that may communicate as a peer so that communication and data paths within the content delivery system may skip unnecessary engines. For example, data may be communicated directly from the storage processor engine of the content delivery system to the transport processing engine of the content delivery system without having to utilize resources of the application processing engine of the content delivery system. This passage does not teach that a priority is used that is in proportion to a level of resources contributed to peer-to-peer sharing. Thus, there is no teaching or suggestion in this cited paragraph of requesting

information from a network server, *wherein the request is given priority in proportion to the level of resources contributed to peer-to-peer sharing*".

As shown above, the cited reference does not teach a key feature of the present invention - requesting information from a network server, *wherein the request is given priority in proportion to the level of resources contributed to peer-to-peer sharing*. This claimed step advantageously provides incentives for devices to contribute resources to a peer-to-peer computer network. The cited reference provides no such incentives. For a prior art reference to anticipate in terms of 35 U.S.C. 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). As shown above, every element of the claimed invention is not identically shown in the cited Hartsell reference, and thus Claim 4 (and dependent Claim 5) is not anticipated by the Hartsell reference.

With respect to Claim 9 (and dependent Claim 10) and 14 (and dependent Claim 15), Appellants urge error in the rejection of such claim for similar reasons to those given above with respect to Claim 4.

Therefore, the rejection of Claims 1-15 under 35 U.S.C. § 102 is shown to be in error, as every element of the claimed invention is not identically shown in a single reference, and Appellants thus request that the rejection of such claims be reversed.

  
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### CLAIMS APPENDIX

The text of the claims involved in the appeal are:

1. A method to provide incentives for client machines to contribute resources to a peer-to-peer computer network, the method comprising:
  - receiving requests for information from a plurality of client machines;
  - determining if the client machines are contributing resources to peer-to-peer sharing; and
  - sending the requested information to the client machines, wherein priority is given to requests from clients which are contributing resources to peer-to-peer sharing.
2. The method according to claim 1, wherein the step of giving priority to client machines which contribute resources to peer-to-peer sharing further comprises giving higher priority in proportion to the level of resources contributed.
3. The method according to claim 1, wherein the resources client machines may contribute to peer-to-peer sharing comprise:
  - disk space;
  - bandwidth;
  - CPU resources;
  - memory; and
  - specified number of connecting users.

4. A method for accessing information in a peer-to-peer computer network by a device, the method comprising:
- contributing, by the device, computer resources to peer-to-peer sharing technology;
  - requesting, by the device, information from a network server, wherein the request is given priority in proportion to the level of resources contributed to peer-to-peer sharing by the device;
  - and
  - receiving, by the device, the requested information.
5. The method according to claim 4, wherein the resources contributed to peer-to-peer sharing comprise:
- disk space;
  - bandwidth;
  - CPU resources;
  - memory; and
  - specified number of connecting users.
6. A computer program product in a computer readable medium for use in a data processing system, to provide incentives for client machines to contribute resources to a peer-to-peer computer network, the computer program product comprising:
- instructions for receiving requests for information from a plurality of client machines;
  - instructions for determining if the client machines are contributing resources to peer-to-peer sharing; and



instructions for sending the requested information to the client machines, wherein priority is given to requests from clients which are contributing resources to peer-to-peer sharing.

7. The computer program product according to claim 6, wherein the instructions for giving priority to client machines which contribute resources to peer-to-peer sharing further comprise instructions for giving higher priority in proportion to the level of resources contributed.

8. The computer program product according to claim 6, wherein the resources client machines may contribute to peer-to-peer sharing comprise:

disk space;

bandwidth;

CPU resources;

memory; and

specified number of connecting users.

9. A computer program product in a computer readable medium for use in a data processing system, for accessing information in a peer-to-peer computer network, the method comprising:

instructions for contributing computer resources to peer-to-peer sharing technology;

instructions for requesting information from a network server, wherein the request is given priority in proportion to the level of resources contributed to peer-to-peer sharing; and

instructions for receiving the requested information.

10. The computer program product according to claim 9, wherein the resources contributed to peer-to-peer sharing comprise:

disk space;

bandwidth;

CPU resources;

memory; and

specified number of connecting users.

11. A system to provide incentives for client machines to contribute resources to a peer-to-peer computer network, the system comprising:

a receiving component which receives requests for information from a plurality of client machines;

a processing component which determines if the client machines are contributing resources to peer-to-peer sharing;

a register which maintains a queue, wherein priority is given to requests from clients which are contributing resources to peer-to-peer sharing; and

a communications component which sends the requested information to the client machines.

12. The system according to claim 11, wherein the register which maintains the queue further comprises a second queue for requests from clients which contribute resources, wherein higher priority is given in proportion to the level of resources contributed.

13. The system according to claim 11, wherein the resources client machines may contribute to peer-to-peer sharing comprise:

disk space;  
bandwidth;  
CPU resources;  
memory; and  
specified number of connecting users.

14. A system for accessing information in a peer-to-peer computer network, comprising:  
a peer-to-peer sharing component which contributes computer resources to peer-to-peer sharing technology;

a communications component which requests information from a network server, wherein the request is given priority in proportion to the level of resources contributed to peer-to-peer sharing; and

a receiving component which receives the requested information.

15. The system according to claim 14, wherein the resources contributed to peer-to-peer sharing comprise:

disk space;  
bandwidth;  
CPU resources;  
memory; and  
specified number of connecting users.

**EVIDENCE APPENDIX**

There is no evidence to be presented.

**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.